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FCC MAIL CARTERET COMMUNITY COLLEGE

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May 6, 1998

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Commissioner Harold Furthgott-Ross
Federal Communications Commission
1919 M Street N. W.
Washington, DC 20554

Re: MM Docket No. 97-234 /
GC Docket No. 92-52
General Docket No. 90-264
ITFS Auctions

Dear Mr. Furthgott-Ross:

I am writing on behalf of Carteret Community College to ask your assistance in a matter of great concern regarding the potential auctioning of educational channels to the highest bidder by the FCC. Specifically, we request your assistance in obtaining statutory language to clarify that Instructional Television Fixed Service (ITFS) licenses are not to be auctioned by the FCC.

Over three years ago we joined with dozens of community colleges and secondary educational institutions to form a telecommunications partnership with Wireless One of North Carolina, L.L.C. to build a statewide wireless video/data telecommunications network. Our educational/commercial partnership is unique in the telecommunications industry.

After carefully engineering a wide area system that would bring ITFS service to rural and urban North Carolinians alike, WONC assisted dozens of educational institutions in filing applications with the FCC for licenses for the hundred plus ITFS channels that would provide the backbone for the statewide network. The ITFS stations would allow educators to provide distance learning opportunities to the citizens of North Carolina, while permitting the educational institutions to lease excess capacity to WONC to develop a statewide commercial wireless cable system.

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In October of 1995, the FCC opened a filing window for ITFS applications during which time UNC and its affiliates, as well as dozens of community colleges and secondary institutions in North Carolina, filed their applications for new ITFS stations. These ITFS applications were expensive and time consuming to prepare and proposed detailed technical operations. These applications are still pending at the FCC. Now 2 ½ years later, due to a misreading of the Balanced Budget Bill of 1997, the FCC is proposing to dismiss these ITFS applications and auction the ITFS spectrum to the highest bidder. Allowing the FCC to do so would be a tremendous disservice to the state's educational institutions and the citizens they seek to serve, as well as to WONC. We are asking your intervention to ensure the FCC does not take this drastic step.

By way of background, the Balance Budget Act amended Section 309(j) of the Communications Act and extended the FCC's auction authority to include a variety of radio services not previously subject to auctions. However, Congress specifically exempted the licensing of certain radio services including "non-commercial educational broadcast stations" and "public broadcast stations". (See Pub. L. No. 105-33, 111 stat. 251 (1997) §§3002(a)(2) and 47 U.S.C. §§309(j), 367(6). Although ITFS stations have all the characteristics of non-commercial educational broadcast stations (i.e., they can only be licensed to an accredited institution or non-profit educational entity, there is no license application fee or annual regulatory fee and the stations are used primarily to serve the educational needs of the community), because the FCC technically qualifies ITFS as a "non-broadcast service" for certain purposes, the FCC now proposes to dismiss all of the pending ITFS applications and auction the spectrum applied for (as well as future ITFS spectrum), pitting educators against one another in some bizarre bidding process comprised entirely of non-profit institutions.

The Omnibus Budget Reconciliation Act of 1993 (Budget Act) specifically recognized ITFS as a unique service that should be exempt from auctions because its principal mandate is the provision of educational television programming to schools and institutions. (H.R. Rep. No. 213, 103rd Cong. 1st Sess. At 481-82). There is nothing in the legislative history of the Balanced Budget Act that indicates Congress meant to change its position on the inappropriateness of applying auctions to ITFS as it had set out in the Budget act four years before. Rather, it appears that because ITFS has all the characteristics of a "non-commercial broadcast" service Congress assumed it to be covered under the exemption from auctions accorded to non-commercial broadcast services in the Balanced Budget Act.

Because lotteries were not used to license ITFS, the FCC still has the authority to use the existing "point-system" to award mutually exclusive ITFS licenses. If the FCC changes licensing procedures midstream, three years of work, technical planning and the hundreds of thousands of dollars spent developing the North Carolina nationwide network will be wasted. Additionally, the delay in the FCC's licensing of ITFS via auctions can be expected to be years since the FCC

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has not yet developed any rules for educational/non-profit auctions. It has already been 2 ½ years since our ITFS application was filed - we believe immediate FCC action in processing these applications using the "point system" is the best way to serve the public interest.

Thank you for your attention to this matter which is of critical importance to educators nationwide.

Sincerely,



Donald W. Bryant
President

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PC Paul Meisner, Aide
 Roy Stewart, Chief, Mass Media Bureau
 Magalie Roman Salas, Secretary